

Section 2

Monitoring for Compliance: Adult Jails and Lockups

2.1 Definitions Related to Adult Jails and Lockups

Adult jail. A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year.

Adult lockup. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged.

Collocated facilities. Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds. (See section 4.)

Related complex of buildings. A related complex of buildings is two or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.

Status offender. A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- ◆ Truancy.
- ◆ Violations of curfew.
- ◆ Runaway.
- ◆ Underage possession and/or consumption of tobacco products.

- ◆ Underage alcohol offenses. These offenses are considered status offenses, even though state or local law may consider them delinquent offenses.⁴

Nonoffender. A nonoffender is a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Civil-type juvenile offender. A civil-type juvenile offender is a juvenile who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

2.2 Definitions of Secure and Nonsecure Custody of Juveniles Held in Adult Jails and Lockups

Secure Custody

As used to define a detention or correctional facility, this term includes residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., locked rooms and buildings, fences, or other physical structures). It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (i.e., staff secure).

Further guidance in distinguishing nonsecure custody from secure custody comes from the November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy*. The policy states that a secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside, or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire

⁴ With regard to underage alcohol offenses, in many states it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

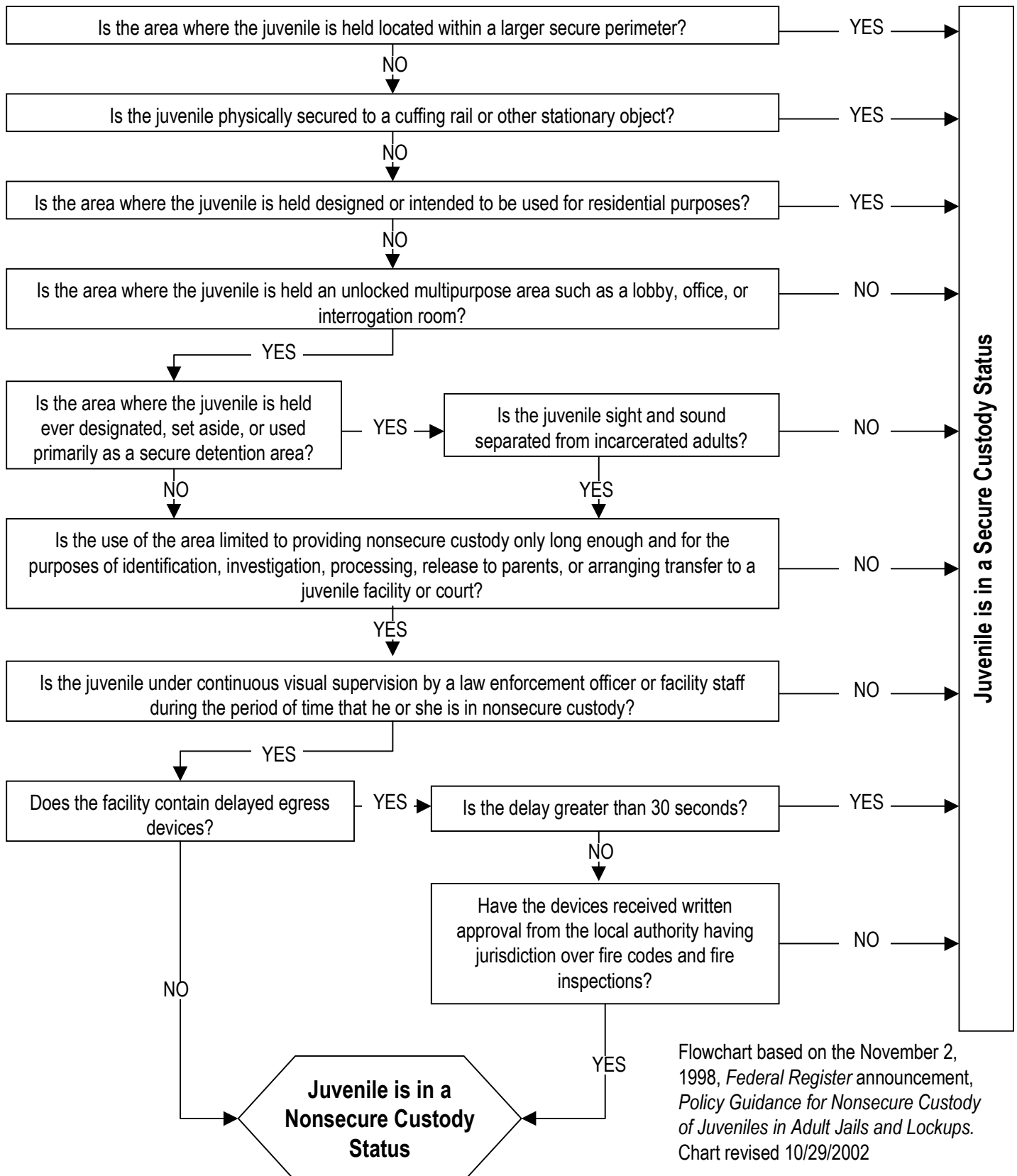
inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.⁵

As examples, a juvenile placed in the following situations would be considered in a secure custody status:

- ◆ A juvenile placed in an unlocked room within the secure perimeter of an adult jail or lockup or a juvenile detention center.
- ◆ A juvenile handcuffed to a rail in an unlocked lobby area of an adult jail or lockup.
- ◆ A juvenile placed in a room that contains doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.
- ◆ A juvenile being processed in a secure booking area where an unsecure booking area is available within a facility.
- ◆ A juvenile left in a secure booking area after being photographed and fingerprinted.
- ◆ A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.

⁵ This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an “approved supervised automatic fire detection system or approved supervised automatic sprinkler system.”

Flowchart To Determine if a Juvenile Is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup



Nonsecure Custody

A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in a secure detention or confinement status. OJJDP's *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups*⁶ states that **all** of the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

- ◆ The area where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room that is not designated, set aside or used primarily as a secure detention area or is not part of such an area,⁷ or, if a secure area, is used only for processing purposes;
- ◆ The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
- ◆ The use of the area is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
- ◆ In no event can the area be designed or intended to be used for residential purposes; and
- ◆ The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- ◆ A juvenile handcuffed to a nonstationary object. If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure.
- ◆ A juvenile being processed through a secure booking area. Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside

⁶ *Federal Register* 53, no. 212 (November 2, 1988):44367 (see appendix E).

⁷ An unlocked multipurpose area need not be considered part of a secure detention area if, while the juvenile is in the area, sight and sound separation from adult offenders is maintained at all times.

the booking area.

- ◆ A juvenile placed in a secure police car for transportation. The JJDP Act applies to secure detention facilities and secure correctional facilities; therefore, a juvenile placed in a police car for transportation would be in a nonsecure status.
- ◆ A juvenile placed in a nonsecure runaway shelter but prevented from leaving because of staff restricting access to exits. A facility may be nonsecure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.
- ◆ A juvenile placed in a room that contains doors with delayed egress devices that have been approved in writing (including a specification of the maximum time delay allowed) by the authority having jurisdiction over fire codes and fire inspections in the area in which the facility is located and that comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections. In no case shall this delay exceed 30 seconds (see footnote 5 on page 7).

2.3 Compliance With Deinstitutionalization of Status Offenders

Prohibition on Secure Holding

Adult jails and lockups cannot hold status offenders, nonoffenders, alien juveniles, or civil-type juvenile offenders in a secure manner at any time. These juveniles may be detained in a nonsecure area of an adult jail or lockup for processing while awaiting transportation to a nonsecure shelter care facility or a juvenile detention center or while waiting release to a parent or guardian.

Youth Handgun Safety Act Exception

The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x) or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the state's annual monitoring report.

Monitoring for Deinstitutionalization of Status Offenders

Adult jails and lockups should keep records of every juvenile who enters the facility. For status offenders, nonoffenders, alien juveniles, and civil-type juvenile offenders, the records should indicate if the juvenile was held securely or nonsecurely. If such a juvenile is held in a secure manner at any time, this hold would count as a violation of both DSO and jail removal. If held in a secure manner and not sight and sound separated from adult detainees while being held securely, the result would be a violation of DSO, separation, and jail removal.

2.4 Compliance With Jail Removal

Prohibition and Exceptions to the Secure Holding of Juveniles

The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” There are three exceptions to this requirement:

- ◆ A 6-hour hold exception for alleged delinquent offenders.
- ◆ An exception for alleged delinquent offenders in rural areas if certain criteria are met.
- ◆ An exception for juveniles waived or transferred to a criminal court.

Six-Hour Hold Exception

OJJDP regulations allow for a 6-hour “grace period” that permits the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses that would be a criminal offense if committed by an adult). Under this exception, the juvenile cannot have sight or sound contact with adult inmates during the time the juvenile is in a secure custody status in the adult jail or lockup. The 6 hours can be used in the following circumstances:

- ◆ An accused delinquent could be detained for up to 6 hours for the purposes of processing or release or transfer to a juvenile facility. Any holding of juveniles should be limited to the absolute minimum time necessary to complete these purposes, not to exceed 6 hours. An accused or adjudicated delinquent could be detained for up to 6 hours before a court appearance and up to an additional 6 hours after a court appearance, but any hold of an adjudicated delinquent that is not related to a court appearance is a violation of jail removal.

The following is noted about this exception:

- ◆ The 6-hour time periods cannot be combined to extend the time frame. For example, a juvenile cannot be detained for 4 hours before and 7 hours after the court appearance.
- ◆ Once the juvenile has been placed in a secure custody status and the 6-hour period has begun,

the facility cannot temporarily take the juvenile out of a secure custody status and begin the 6-hour time period again. For example, if a juvenile was placed in a secure custody status for 4 hours, then was taken to a nonsecure interview room for 1 hour, then was returned to a secure custody status for 2 hours, the total time to report for the jail removal provision is 7 hours and would be a violation of the 6-hour limit.

- ◆ A status offender, nonoffender, alien juvenile, or civil-type juvenile offender cannot be securely detained for any length of time in an adult jail or lockup.
- ◆ Adjudicated delinquents cannot be held for any length of time in adult jails or lockups as a disposition.
- ◆ A juvenile may not be transferred to a jail or lockup from a juvenile detention center for disciplinary reasons.
- ◆ Sight and sound separation from adult offenders must be maintained at all times pursuant to the separation requirement.

Removal (Rural) Exception⁸

OJJDP regulations implement a statutory “rural” exception, allowing the temporary detention beyond the 6-hour limit of juveniles accused of delinquent offenses who are awaiting an initial court appearance with 48 hours (excluding weekends and holidays).

It is important to note that the rural exception does not apply to status offenders. Status offenders may not be held for any length of time in an adult jail or lockup.

All of the following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained in an adult jail or lockup under the rural exception:

- ◆ The geographic area having jurisdiction over the juvenile must be outside a metropolitan statistical area (i.e., qualify as a “rural” area) as defined by the Office of Management and Budget;
- ◆ A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the state and approved by OJJDP;
- ◆ The adult jail or lockup must have been certified by the state to provide for the sight and

⁸ Although cited in regulations as the “removal exception,” this provision is more commonly referred to as the “rural exception” and for the purposes of this manual will continue to be referred to as the rural exception.

sound separation of juveniles and adult inmates;

- ◆ There is in effect in the state a policy that requires individuals who work with both juveniles and adult inmates in collocated facilities to have been trained and certified to work with juveniles;
- ◆ The state must provide documentation that conditions listed above have been met. In addition, the state must have received prior approval from OJJDP to use the rural exception.⁹ OJJDP strongly recommends that jails and lockups that incarcerate juveniles provide youth-specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

If all of the above conditions are met, a juvenile awaiting an initial court appearance may be detained for the following time periods:

- ◆ Up to 48 hours (excluding weekends and holidays), or
- ◆ If the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed 48 hours) delay is excusable; or
- ◆ If the facility is located where conditions adverse to safety exist (e.g., severe, life-threatening weather conditions that do not allow for reasonably safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

These extended time periods cannot be used after the initial court appearance. After the initial court appearance, the 6-hour exception applies and the juvenile could be held only for up to 6 hours prior to and 6 hours after a court appearance.

Transfer or Waiver Exception

If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges. Note that waiver or transfer and the filing of

⁹ 28 CFR 31.303(f)(4)(i)(v)

criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders until that juvenile reaches the state's age of majority, at which time, he or she must be separated from the juvenile population within 6 months.

2.5 Compliance With Separation

Juveniles Shall Not Have Contact With Adult Inmates

Separation must be achieved in all secure areas of the facility. Accused or adjudicated delinquent offenders, status offenders, and nonoffenders cannot have contact with adult inmates, including inmate trustees. Contact is defined to include any physical or sustained sight or sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between adult inmates and juvenile offenders.

Sight and sound separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and adult inmates in secure nonresidential areas of the facility do not count as violations.

Where a secure booking area is all that is available, continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status and separation would not apply during this time. Once the booking process has been completed, the juvenile must be separated immediately from adult inmates.

In accordance with current OJJDP policy and proposed regulation, the state must assure that no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration or Scared Straight). If violations are found to exist, the state shall submit to OJJDP a description of its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after October 1, 2003.

Administrative Transfers

Adjudicated juvenile offenders cannot be reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A state is not prohibited from placing or transferring an accused or adjudicated delinquent who reaches the state's age of full criminal responsibility to an adult

facility when required or authorized by state law. However, an administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult inmates, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited.

Transferred or Waived Juveniles

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders. This is due to the fact that such a juvenile is not an accused or adjudicated *delinquent* (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding). Likewise, an adult held in an adult jail or lockup for a delinquency proceeding (generally related to a crime committed before reaching the age of full criminal responsibility) can be held securely in an adult jail or lockup because the adult is not a juvenile alleged to be or found to be delinquent. Both types of individuals can be placed wherever the legislature or courts, where authorized, deem appropriate.

2.6 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that states have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the state. In addition, the state must conduct regular onsite visits to monitor all adult jails and lockups and verify reported data.

To demonstrate compliance with the JJDP Act, all adult jails and lockups must report the following:

- ◆ Dates covered by the reporting period, as defined by the state monitoring agency.
- ◆ Whether the facility held any juveniles in a secure custody status¹⁰ during the reporting period. If no juveniles were held, the remaining reporting items do not apply for this reporting period.

¹⁰ For the purposes of reporting on the adult jail and lockup removal and separation requirements, only holding those juveniles who are under the age of the state age of majority and who are held in violation of the JJDP Act are considered violations. In most states, this age is 18. However, 13 states have a lower age of majority. For example, if a state's age of majority was 16, only those juveniles under the age of 16 that were held in an adult jail or lockup in excess of 6 hours would be reported as violations. Because a 17-year-old in such a state can still be a nonoffender or commit status offenses, this exception does not apply to the DSO requirement, as status offenders and nonoffenders are prohibited from being held securely in an adult jail or lockup for any length of time even though the person may be above the state's age of majority.

- ◆ The total number of accused or adjudicated status offenders (including valid court order violators, youth held in accordance with the Interstate Compact on Juveniles, and alien juveniles) and nonoffenders securely detained for any length of time.
- ◆ The total number of accused juvenile criminal-type offenders held securely for any length of time for purposes other than identification, investigation, processing, release, transfer to court, or transfer to a juvenile facility following initial custody.
- ◆ The total number of accused juvenile criminal-type offenders held securely in excess of 6 hours (including those held in excess of 6 hours pursuant to the rural exception).
- ◆ The total number of accused or adjudicated juvenile criminal-type offenders held securely in excess of 6 hours prior to or following a court appearance or for any length of time not related to a court appearance.
- ◆ If the state has received approval to use the rural exception, the following must be reported for those adult jails or lockups located in areas where the rural exception applies:
 - ▶ The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 48 hours;
 - ▶ The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours but not for more than an additional 48 hours because of conditions of distance or lack of ground transportation; and
 - ▶ The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not for more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel.
- ◆ The total number of juveniles not separated from adult criminal offenders, including inmate trustees.

Note: To gather data for the disproportionate minority contact requirement, the state should request the race and/or ethnicity of each juvenile offender brought to the facility.

Summary of JJDP Act: Adult Jails and Lockups	
	Adult Jail and Lockup
Accused juvenile status offender, nonoffender, civil-type juvenile offender, or alien juvenile	Secure holding prohibited.
Adjudicated juvenile status offender	Secure holding prohibited.
Status offender accused of violating a valid court order	Secure holding prohibited.
Status offender adjudicated for violating a valid court order	Secure holding prohibited.
Accused juvenile delinquent	Secure hold limited to up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Adjudicated juvenile delinquent*	Secure hold limited to up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Juvenile transferred to criminal court and charged with a misdemeanor	Secure hold limited to 6 hours prior to and 6 hours after a court appearance. Separation is not required.
Juvenile transferred to criminal court and convicted of a misdemeanor	Secure holding prohibited.
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.
Adult accused of or convicted of a crime	No restrictions on holding.

* See "Removal (Rural) Exception" in section 2.4.